HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.12289 OF 2007

Between:

Sri P. Shankar Reddy

…Petitioner

AND

Sri M. Doraswamy and four others

...Respondents

: O R D E R :

Counsel for the petitioner : Smt. Manjiri S. Ganu

June 14, 2007

Per G.S. Singhvi, CJ

This petition filed for quashing orders dated 20.10.2006 and 30.3.2007 passed by District Consumer Forum-II, Tirupathi (respondent No.5) and the Andhra Pradesh State Consumer Disputes Redressal Commission (for short, 'the State Commission') is a typical example of the harassment to which a consumer is subjected to by the supplier of goods.

Respondent No.1, M. Doraswamy, an unemployed young man, after taking loan from the Central Bank of India for setting up small

business, placed order with M/s. Siddartha Photostats, Tirupathi for supply of new xerox machine. However, the latter supplied an old machine and did not replace the same despite repeated requests. This compelled respondent No.1 to file a complaint under Section 12 of the Consumer Protection Act, 1986 (for short, 'the Act') before District Consumer Forum, Chittoor (respondent No.4), which was registered as C.D.No.312 of 1997.

By an order dated 19.2.2000, respondent No.4 allowed the complaint and directed the Proprietor of M/s. Siddartha Photostats, Tirupati (respondent No.2) to replace the old xerox machine with a new one and pay Rs.5,000/- towards damages and Rs.500/- towards costs.

One M. Sai Kumar claiming to be the Proprietor of M/s. Siddartha Photostats, Tirupathi challenged the order of respondent No.4 by filing an appeal (F.A.No.184 of 2000) under Section 15 of the Act. He also filed an application for interim relief (F.A.I.A.No.349 of 2000). By an order dated 23.2.2001, the State Commission stayed the order of respondent No.4 subject to the condition that respondent No.2 should deposit Rs.50,000/- with respondent No.4. When the said amount was deposited, Branch Manager, Central Bank of India, Pakala, from whom respondent No.1 had taken loan, got the same attached in O.S.No.181 of 2001, which was filed against respondent No.1 for recovery of Rs.96,600/-.

F.A.No.184 of 2000 was finally dismissed by the State Commission vide its order dated 21.10.2003. That order was not challenged by respondent No.2 either by filing revision before the National Commission or by filing writ petition under Article 226 of the Constitution of India. After sometime, respondent No.1 filed an application under Section 27 of the Act. On the creation of respondent No.5, the proceedings of the application filed by respondent No.1 under Section 27 of the Act were transferred to the said respondent. The latter issued arrest warrant against respondent No.2 and sent the

same to Superintendent of Police, Chittoor for execution.

It appears that in the meanwhile, the petitioner purchased Siddartha Photostats, Tirupathi from M. Sai Kumar. He filed I.A. No.107 of 2006 for recall of the arrest warrant, but the same was dismissed by respondent No.5 vide order dated 6.7.2000. The petitioner did not challenge that order, but filed E.A.No.12 of 2006 under Section 27 of the Act for issue of a direction to respondent No.1 to deposit Rs.50,000/- with interest at the rate of 18% from 3.4.2001. That application was dismissed by respondent No.5 vide its order dated 20.10.2006. Revision preferred by the petitioner was dismissed by the State Commission vide order dated 30.3.2007 by observing that the petitioner does not have the locus standi to seek a direction against respondent No.1 for deposit of Rs.50,000/-. For the sake of convenient reference, the relevant extracts of orders dated 20.10.2006 passed by respondent No.5 and 30.3.2007 passed by the State Commission are extracted below:

Order dated 20.10.2006

> The first respondent/complainant filed the complaint in C.D.No.312/1997 on the file of the District Forum, Chittoor against the second respondent – Proprietor, Siddartha Photostats, Tirupati and the Branch Manager, Central Bank of India, Pakala for directing the second respondent to replace the old Xerox machine with a new one and to pay damages and costs of the complainant. The District Forum, Chittoor by its order, dt. 19.02.2000 directed the second respondent/first opposite party to replace the old Xerox machine with a new one in good working condition and also to pay Rs.5,000/- towards damages and Rs.500/- towards costs. One M. Sai Kumar, claiming to be the Proprietor of Siddartha Photostats, Tirupati preferred appeal against the order in C.D.No.312/1997 before the A.P. State Consumer Disputes Redressal Commission, Hyderabad. The Honourable A.P. State Commission by order dt.23.02.2001 in F.A.I.A.No.349/2000 in F.A.No.184/2000 granted interim stay of operation of the orders passed in C.D. No.312/1997 on condition of Siddartha Photostats, represented by its Proprietor, M. Sai Kumar depositing Rs.50,000/- before the District Forum, Chittoor within a period of six weeks from the

date of the order. When the said amount of Rs.50,000/- was deposited, the second opposite party, i.e. the Branch Manager, Central Bank of India, Pakala got the amount attached in O.S.No.181/2001 which was filed against the complainant in C.D.No.312/1997 for recovery of loan amount of Rs.96,600/- advanced by the bank for the purchase of Xerox machine from opposite party No.1 and later withdrawn the amount of Rs.50,000/-. In the meanwhile, the Honourable State Commission dismissed the appeal in F.A.No.184/2001 on 21.10.2003. The District Forum, Chittoor ordered arrest warrant against the second respondent, i.e. the Proprietor, Siddartha Photostats, Tirupati and sent to the Superintendent of Police, Chittoor for execution. Consequent on the establishment of the District Forum-II at Tirupati, the penalty petition was transferred to this Forum. When this Forum insisted the Tirupati police for execution of warrant against the second respondent, the petitioner filed I.A.No.107/2006 to recall the arrest warrant issued against the Proprietor, M/s.Siddartha Photostats, Tirupati and relieve him from liability stating that he purchased the furniture of Siddartha Photostats from one Kumar in the year 2003 and is running the same with the same name since it has got good will in the society, that since the complainant did not mention the name of the Proprietor of second respondent, the order of the District Forum, Chittoor cannot be executed and that since he is not made a party in the main case, he is not liable to pay any amount and the arrest warrant has to be recalled. After full enquiry, this Forum dismissed I.A.No.107/2006 holding that this Forum cannot go behind the order passed by the District Forum, Chittoor and upheld by the Honourable State Commission and the petitioner, who is the transferee, is liable to the liabilities of the second respondent.

The petitioner did not prefer any appeal or revision against the orders of this Forum in I.A.No.107/2006 and the order became final.

Section 27 of Consumer Protection Act provides for imposing punishment of imprisonment for a term that shall not be less than one month and which may extend to three years or minimum fine of Rs.2,000/- and a maximum of Rs.10,000/- or both on a trader or a person against whom a complaint was made, or the complainant failing or omitting to comply with any order made by the District Forum, State Commission or National Commission. The District Forum, State Commission and National Commission are deemed to be Judicial Magistrates of

First Class under Criminal Procedure Code and summary procedure as prescribed in Cr.P.C. shall be followed. The Civil Procedure Code is not applicable to Consumer Fora except to the extent mentioned in sub-section 4(4) of Section 13 of Consumer Protection Act. Under sub-section (4), the Consumer Forum is given certain powers of a civil Court i.e. (i) to summon and enforce the attendance of any defendant or witnesses and examining on oath; (ii) discovery and production of any document or other material object producible as evidence; (iii) reception of evidence on affidavit; (iv) requisitioning of the report of the analyst of appropriate laboratory or from any other relevant source; (v) issuing of any commission for the examination of any witness; and (vi) any other prescribed matter. The Consumer Forum is not given inherent powers as provided in Section 151 CPC. The present petition filed under Section 27 of C.P. Act, read with Section 151 CPC is not maintainable. Even assuming for the sake of argument that the present petition is maintainable, the relief prayed by the petitioner to direct the first respondent to deposit Rs.50,000/- with interest at 18% p.a. from 3.4.2001 till the date of deposit cannot be granted by this Forum. While dismissing the appeal in F.A.No.184/2001 preferred by the Proprietor, Siddartha Photostats, the Honourable State Commission did not specify the party, who is entitled to withdraw the amount of Rs.50,000/- deposited by M/s.Siddartha Photostats, represented by its Proprietor, M. Sai Kumar as per the orders dt.23.2.2001 in F.A.I.A.No.349/2000. The Honourable State Commission upheld the order of the District Forum which directed the Proprietor, M/s.Siddartha Photostats, Tirupati to replace the old Xerox machine with a new one in good working condition and also to pay Rs.5,000/- towards damages and Rs.500/- towards costs and dismissed the appeal. If the petitioner feels that he is entitled to the amount of Rs.50,000/- as transferee, he can seek his remedy before appropriate authority. When this Forum dismissed the I.A.No.107/2006 rejecting his plea to recall the arrest warrant, the petitioner kept quiet without filing any appeal or revision and the order has become final.

Order dated 30.3.2007

From the aforementioned fact it is very clear that neither the District Forum nor the State Commission can go behind the decree. The present petitioner who is a third party also has no locus standi to file the petition under Sec.27 of the C.P. Act directing the complainant to deposit the amount of

Rs.50,000/-. The State Commission also did not specify as to who is entitled to withdraw Rs.50,000/- deposited by Siddhartha Photostats and it has upheld the order of the District Forum directed the second respondent/first opposite party to replace the old Xerox machine with a new one in good working condition and also to pay Rs.5,000/- towards damages and Rs.500/- towards costs. From the facts and circumstances of the case, the R.P. fails and is accordingly dismissed.

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Smt. Manjari S. Ganu, learned counsel for the petitioner, vehemently argued that after having issued arrest warrant against her client, respondent No.4 and the State Commission could not have dismissed E.A.No.12 of 2006 and R.P.No.218 of 2006 by declaring him to be a stranger to the proceedings of the complaint filed by respondent No.1. She submitted that in compliance of interim order dated 23.2.2001 passed by the State Commission in F.A.I.A.No.349 of 2000 (F.A.No.184 of 2000), the predecessor of the petitioner had deposited Rs.50,000/- and, therefore, while disposing of the appeal, the State Commission ought to have ordered refund of that amount. Learned counsel emphasised that respondent No.1 cannot take double advantage by taking Rs.50,000/- deposited by respondent No.2 and also get new photostat machine.

We have given serious thought to the arguments of the learned counsel. In our opinion, the orders impugned in the writ petition do not suffer from any jurisdictional infirmity or error of law apparent on the face of the record warranting interference under Article 226 of the Constitution of India. Respondent No.5 and the State Commission have assigned cogent reasons for refusing to entertain the application filed by the petitioner under Section 27 of the Act and the revision petition and we do not see any reason to take a different view. Even otherwise, we are convinced that the writ petition is liable to be dismissed because,

i) the petitioner has not produced any evidence before the Court about the transfer of proprietorship of

M/s. Siddartha Photostats, Tirupathi by M. Sai Kumar;

ii) no document has been produced evidencing transfer of the proprietorship of M/s. Siddartha Photostats and without going through the terms and conditions of transfer, this Court cannot adjudicate on the petitioner's locus to seek a direction for return of Rs.50,000/- by respondent No.1, and

iii) the order passed by the District Forum in C.D.No.312 of 1997 and order dated 21.10.2003 passed by the State Commission in F.A.No.184 of 2000 have become final and the same could not have been reopened by respondent No.5 by entertaining E.A.No.12 of 2006.

For the reasons stated above, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP. No.15317 of 2007 filed by the petitioner for interim relief is also dismissed.

G.S. SINGHVI, CJ

14th June, 2007

C.V. NAGARJUNA REDDY, J

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